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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MIKE HOWISEY, as attorney in fact for
11 WALLACE E. HOWISEY, an incapacitated
12 person,

13 Plaintiff,

14 v.

15 TRANSAMERICA LIFE INSURANCE
16 COMPANY, a foreign corporation organized
17 under the laws of the State of Iowa,

18 Defendant.

Case No. C17-0009 RSM

ORDER DENYING MOTION FOR
RECONSIDERATION

19 This matter comes before the Court on Plaintiff Mike Howisey's Motion for
20 Reconsideration. Dkt. #75. The Court has determined that a Response is unnecessary and has
21 not requested one from Defendant. *See* LCR 7(h)(3). The Court incorporates by reference the
22 facts of this case as stated in the underlying Summary Judgment Order ("Order"), Dkt. #73.

23 "Motions for reconsideration are disfavored." LCR 7(h)(1). "The court will ordinarily
24 deny such motions in the absence of a showing of manifest error in the prior ruling or a
25 showing of new facts or legal authority which could not have been brought to its attention
26 earlier with reasonable diligence." *Id.* Under Washington law, interpretation of an insurance
27 contract is a question of law. *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 424, 38 P.3d 322
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1 (2002). “The terms of a policy should be given a fair, reasonable, and sensible construction as
2 would be given to the contract by the average person purchasing insurance.” *Id.* Furthermore,
3 a policy must be considered “as a whole,” including riders or endorsements. *Kitsap Cty. v.*
4 *Allstate Ins. Co.*, 964 P.2d 1173, 1177 (Wash. 1998). Defined terms “should be interpreted in
5 accordance with [the] policy definition.” *Id.*

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7 Generally speaking, Mr. Howisey has diligently and respectfully presented why he
8 disagrees with the Court’s rulings, but has failed to demonstrate manifest error in those rulings.
9 Mr. Howisey cites to new facts obtained in discovery after all of the summary judgment
10 briefing was submitted, however these facts are immaterial to the Court’s ruling and would not
11 have altered it.

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13 The Court will address each of Mr. Howisey’s arguments in turn. First, Mr. Howisey
14 argues the Court overlooked or misapprehended ambiguities in the Policy. Dkt. #75 at 2–3.
15 The Court found the Policy’s language unambiguous in “defining the requirements of receiving
16 Nursing Home Benefits versus Assisted Living Facility Benefits,” and that “to receive Nursing
17 Home Benefits, the insured must be staying at a Nursing Home licensed as such by the state.”
18 Dkt. #73 at 9–10. Mr. Howisey asserts the Court overlooked how the definition of “nursing
19 home” in the policy is more restrictive than a state statutory definition and more restrictive than
20 the term as used in the sale of the policy. Dkt. #75 at 2. It was unnecessary to compare the
21 Policy’s definition to statute or sales documents, because under the above standard for
22 interpreting insurance contracts, the policy could be found unambiguous on its own merits by
23 the average person purchasing insurance. Mr. Howisey also argues that the Court overlooked
24 the “substantial compliance” provision. *Id.* at 3. However, as argued in the underlying briefing
25 and considered by the Court, it is undisputed that this provision was never at issue because no
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1 Transamerica representative found Aegis substantially complied with the Policy definition, as
2 required under the Policy. *See* Dkt. #40 at 18 n.7 (citing Dkt. #41 at 12); Dkt. #63 at 13.
3 Arguments about elements of the nursing home definition other than the requirement that the
4 nursing home be licensed as such by the state are irrelevant as the licensing requirement is
5 dispositive.

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7 Second, the instant Motion argues the Order is inconsistent with previously cited
8 Washington State statutes and regulations. Dkt. #75 at 3–8. The Court stands by its analysis of
9 each of those statutes and regulations, and finds that Mr. Howisey has failed to demonstrate
10 manifest error.¹ The Court reiterates that the Policy complies with these regulations because it
11 covers all types of care within a covered facility, and that no regulation cited by Mr. Howisey
12 prevents insurers from requiring facilities to be appropriately licensed, or from offering nursing
13 home benefits and separate assisted living benefits.

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15 Third, Mr. Howisey argues that the Court has overlooked issues of material fact with
16 respect to substantial compliance. As stated above, substantial compliance is not at issue in this
17 case as it is undisputed that no Transamerica representative found Aegis substantially complied
18 with the Policy definition and because the Court found Aegis’ failure to meet the licensing
19 requirement dispositive.

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21 Fourth, Mr. Howisey questions the Court’s rulings on the remaining claims of bad faith,
22 CPA and IFCA violations, negligent supervision, and intentional misrepresentation. *Id.* at 9–
23 11. This just reiterates and rehashes prior arguments addressed and dismissed in the Court’s
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¹ Mr. Howisey argues the Court did not address in its Order “WAC 284-54-050(6),” which “requires prior skilled or intermediate care as a condition of coverage for institutional or community based care.” Mr. Howisey has erroneously cited this regulation, which can be found at WAC 284-54-150(6). The Court did consider this regulation as well as WAC 284-54-150(4), and the Order speaks of WAC 284-54-150 generally in its analysis. *See* Dkt. #73 at 10.

1 Order. The Court finds that its Order reached rulings as a matter of law and did not resolve
2 issues of fact.

3 Fifth, Mr. Howisey addresses his Rule 56(d) request to defer summary judgment and
4 the fact that the Court did not rule on his pending Motion to Compel. *Id.* at 11. Because the
5 Court was able to rule that Mr. Howisey “failed to identify specific facts that further discovery
6 would reveal and why those facts would preclude summary judgment,” this request was
7 properly denied and the Motion to Compel was moot. Even now, Mr. Howisey does not
8 identify helpful specific facts that further discovery might reveal.
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10 Finally, Mr. Howisey points to new facts obtained in discovery on November 7 and 8,
11 2017, after all briefing was submitted. Dkt. #75 at 11–12; *see also* Dkt #76. Mr. Howisey
12 argues that these facts show Transamerica acted in bad faith. The Court notes that this
13 information was obtained weeks before the Court’s Order was issued, and Mr. Howisey has
14 failed to demonstrate that this could not have been brought to the Court’s attention earlier with
15 reasonable diligence. In any event, these facts would not have altered the Court’s ruling
16 because they do not change the fact that Aegis was not licensed as a nursing home, and they
17 fail to materially alter the analysis relied on by the Court in ruling on Mr. Howisey’s bad faith
18 claims and other non-contractual claims.
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21 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
22 finds and ORDERS that Defendants’ Motion for Reconsideration (Dkt. #75) is DENIED.
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24 DATED this 15th day of December 2017.

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27 RICARDO S. MARTINEZ
28 CHIEF UNITED STATES DISTRICT JUDGE